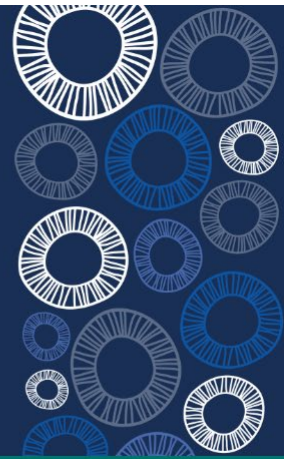




Administrative
Appeals Tribunal

AAT Bulletin



AAT Bulletin

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The *AAT Bulletin* is a fortnightly publication containing information about recently published decisions and appeals against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals Divisions. The Bulletin also regularly includes a sample of decisions recently published in the AAT's Migration & Refugee Division and Social Services & Child Support Division. It occasionally includes information on legislative changes that affect the AAT.

It is recommended that the Bulletin be read online. This has the advantage of allowing the reader to use hyperlinks to access the full text of cases and other internet sites mentioned in the Bulletin.

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Enquiries regarding this publication may be directed to LPExtFeedback@aat.gov.au.

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Recent developments

Changes to online forms

We have reduced the amount of time an online form can be saved on our website from 28 to 14 days. Applicants will be advised of this timeframe through the confirmation email that will be sent to them after saving their application.

AAT Recent Decisions

This section of the Bulletin provides information about all decisions recently published in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals. This list also includes selected child support decisions published by the Social Services & Child Support Division and examples of recent decisions published by the Migration & Refugee Division. Only AAT decisions that have been published on [AustLII](#) have been included. Full copies of the decisions can be accessed through the hyperlinks provided below.

Child Support

[Artfull and Rochester](#) (Child support) [2023] AATA 2131 (14 June 2023); S Letch, Member

CHILD SUPPORT – particulars of the administrative assessment – estimate of income – whether the estimated income is less than the amount likely to be the actual income – estimate of income correctly refused – decision under review affirmed

[Christie and Mitty](#) (Child support) [2023] AATA 2138 (15 June 2023); T Hamilton-Noy, Member

CHILD SUPPORT – departure determination – costs of orthodontic costs for the child – a ground for departure established – decision under review affirmed

[Guildenstern and Ladislaw](#) (Child support) [2023] AATA 2129 (23 June 2023); S De Bono, Senior Member (Presiding) and J Longo, Senior Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent – no ground for departure established – refusal to depart – decision under review set aside and substituted

[Hamlet and Sawyer](#) (Child support) [2023] AATA 2165 (14 June 2023); S De Bono, Senior Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – existing percentage of care determinations revoked and new determinations made – decision under review varied

[Smiley and Wimsey](#) (Child support) [2023] AATA 2144 (21 June 2023); S De Bono, Senior Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – existing percentage of care determinations revoked and new determinations made – decision under review affirmed

[Titania and Child Support Registrar](#) (Child support) [2023] AATA 2162 (14 June 2023)

CHILD SUPPORT – application for extension of time – no satisfactory explanation for the delay – little merit – extension of time refused

Citizenship

[Alghazali and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 2733 (28 August 2023); Deputy President J Sosso

CITIZENSHIP – applicant fails to complete citizenship test on several occasions – delegate refuses application – applicant claims permanent or enduring physical or mental incapacity to undertake test at time she applied for citizenship – consideration as to whether applicant has such incapacity – enduring mental incapacity found on medical evidence – decision under review set aside and substituted

[Shapkin and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 2823 (5 September 2023); S Evans, Member

CITIZENSHIP – Refusal to approve application for citizenship – Appeal against conviction for an offence against Australian law pending – Applicant subject to Community Corrections Order – Tribunal is not required to apply provisions of legislation sequentially – Tribunal must apply relevant law and circumstances in place at the time of review unless indications to the contrary exist – reviewable decision affirmed

[ZVHJ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2023] AATA 2779 (1 September 2023); A E Burke AO, Member

CITIZENSHIP – refusal of approval for Australian citizenship by conferral – whether satisfied of identity of applicant – whether documentation was sufficient – whether made genuine attempt to obtain documentation from Iran/Iraq – consideration of DFAT Country Information Report – whether satisfied of life story – whether the application for citizenship should be approved – life story remained consistent – Tribunal unable to be reasonably satisfied of identity – decision affirmed

Compensation

[Flahive and Comcare](#) (Compensation) [2023] AATA 2773 (31 August 2023); Senior Member Dr M Evans-Bonner

WORKERS' COMPENSATION – claim for permanent impairment – binaural hearing loss and tinnitus from exposure to acoustic shrieks at work – whether injuries resulted in permanent impairment – degree of permanent impairment – whether there are any further conditions resulting in impairment that could be combined to increase the applicant's WPI – whether psychiatric impairment that Applicant previously received a permanent impairment compensation payment for could be combined with auditory impairments – Reviewable Decision affirmed

Freedom of Information

[Craig and Secretary, Department of Foreign Affairs and Trade](#) (Freedom of Information) [2023] AATA 2785 (28 August 2023); Deputy President Britten-Jones

FREEDOM OF INFORMATION – review of decision to refuse access to a diplomatic communication sent from Australian Embassy in Jakarta to the Department of Foreign Affairs in Canberra – whether disclosure of the document would, or could reasonably be expected to, cause damage to the international relations of the Commonwealth – diplomatic communications as recorded in the document are subject to conventions of confidentiality – disclosure of the document would breach confidence and trust between the governments of Australia and Indonesia – the document is an exempt document under s 33(a)(iii) of the Freedom of Information Act – decision under review is affirmed

Health

[Cat Media Pty Limited Carotino \(Australia\) Pty Limited Pharm-a-Care Laboratories Pty Limited and Minister for Health and Aged Care](#) [2023] AATA 2792 (31 August 2023); Senior Member G Lazanas

HEALTH – therapeutic goods – listing of therapeutic goods on Australian Register of Therapeutic Goods – cancellation of listing of therapeutic goods – whether label of product known as FatBlaster MAX contains indications for fat loss and or weight loss – meaning of contains – whether a statement made in the application for listing of the product FatBlaster MAX was false or misleading in a material particular – whether product FatBlaster MAX was advertised by sponsor for fat loss and or weight loss – the ordinary and reasonable consumer test – assessment of expert evidence – decision under review affirmed

Migration

[Ali and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 2776 (2 August 2023); Senior Member Dr N A Manetta

MIGRATION – mandatory cancellation of visa – applicant does not satisfy character test – whether another reason for revocation of cancellation decision – Direction 99 – sexual assault – past family violence – low risk of reoffending – strength, nature and duration of ties to Australia – applicant has wife and three minor children in Australia – family's circumstances straitened – applicant more likely to make meaningful financial contribution to family if working in Australia – best interests of minor children weigh significantly in applicant's favour – decision under review set aside

[Broom and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 2769 (29 August 2023); Deputy President S Boyle

MIGRATION – Migration Act s 501(1) – decision of a delegate of the Minister to refuse to grant a visitor visa – whether the visa applicant passes the character test – whether Tribunal should exercise the discretion in s 501(1) to refuse to grant the visa – Direction 99 – visa applicant an extremely low risk of offending – links to the Australian community – the weighing exercise – CRNL v Minister for Immigration, Citizenship and Multicultural Affairs considered – discretion not to grant the visa under s 501(1) not exercised – decision set aside and substituted

[Herewini and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 2838 (4 September 2023); Senior Member George

MIGRATION – Class TY Subclass 444 Special Category (Temporary) visa – where Applicant does not pass the character test – consideration of Ministerial Direction No.99 – offending serious – decision under review set aside

[HTRT and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2023]
AATA 2834 (7 August 2023); L M Gallagher, Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – where the Applicant fails the character test – where there is another reason to revoke the mandatory cancellation of visa- consideration of Direction No 99 – primary and other considerations – protection of Australian community – nature and seriousness of criminal offending – risk to the Australian community should the Applicant commit further offences or engage in other serious conduct – strength, nature and duration of ties to Australia – best interests of children – expectations of the Australian community – extent of impediments if removed – Applicant is a 28 year old man who arrived in Australia as a 14 year old – extent of impediments if returned to Zimbabwe found to be considerable – strength nature and duration of ties in Australia found to be considerable – Tribunal finding that there is another reason to revoke the mandatory cancellation of visa – Non-Revocation Decision is set aside and substituted

[Kalolo and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 2780 (31 August 2023); Senior Member B J Illingworth

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special Category (Temporary) visa – temporary visa – New Zealand citizen – where Applicant does not pass the character test – serious criminal record – Applicant has substantial criminal record – whether “another reason” to revoke visa cancellation – Ministerial Direction 99 – s 501CA(4) – s 501(3A) – discretion to revoke the mandatory cancellation – decision under review set aside

[Lafaele and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2021]
AATA 3379 (15 September 2021); Senior Member T Tavoularis

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special Category (Temporary) visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – case affected by Pearson v Ministerial for Home Affairs [2022] FCAFC 203 – Applicant released into the community – application of the Migration Amendment (Aggregated Sentences) Act 2023 (Cth) to the case – Applicant continues to remain in the community – Applicant’s recidivist risk factors assessed in the community – consideration of Ministerial Direction No. 99 – finding of another reason to revoke the mandatory cancellation decision – decision under review set aside and substituted

[LYTW and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 2824 (14 August 2023); McLean Williams, Member

MIGRATION – Cancellation of Partner Visa (Class BC) (Subclass 100) visa under s. 501(3A) of the Migration Act 1958 (Cth) – where Applicant does not pass the character test – decision under review set aside and substituted

Manson and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2023] AATA 2833 (6 September 2023); Senior Member A Poljak

MIGRATION – mandatory cancellation of a Special Category (Temporary) (Class TY) (Subclass 444) visa under section 501(3A) – where applicant does not pass the character test – applicant has substantial criminal record – whether the discretion to revoke the visa cancellation under section 501CA(4) should be exercised – consideration of Ministerial Direction No. 99 – decision under review is affirmed

McMillan and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2023]

AATA 2735 (28 August 2023); R Maguire, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special Category (Temporary) visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 99 – decision under review affirmed

Morgan and Minister for Immigration, Citizenship, and Multicultural Affairs (Migration) [2023]

AATA 2822 (5 September 2023); Senior Member A Nikolic AM CSC

MIGRATION – Visa cancellation – citizen of New Zealand – Class TY Subclass 444 Special Category (Temporary) visa – sexual offending involving a child – Applicant fails character test – Mandatory visa cancellation – non-revocation decision – Ministerial Direction No. 99 applied – Reviewable decision set aside and substituted

NSPX and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2023]

AATA 2829 (1 September 2023); Senior Member Emeritus Professor P A Fairall

MIGRATION – Migration Act section 501CA(4) – primary considerations – other considerations – whether there is another reason to revoke mandatory cancellation of applicant's visa – Ministerial Direction No.99 – substantial criminal record – nature and seriousness of the offending – family violence – strength, nature and duration of ties to Australia – best interests of minor children – expectations of the Australian community – extent of impediments if removed – decision affirmed

Peek and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2023] AATA

2861 (8 September 2023); Deputy President The Hon. J Pascoe AC CVO

MIGRATION – visa cancellation – mandatory cancellation under s 501(3A) of the Migration Act 1958 – where Applicant does not pass the character test – whether there is 'another reason' to revoke the cancellation – consideration of Direction No. 99 – protection of the Australian community – whether the Applicant's conduct constituted family violence – ties to the Australian community – best interests of minor children in Australia – expectations of the Australian community – impediments to removal – decision affirmed

RCWV and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2023]

AATA 2862 (30 August 2023); Senior Member J Rau SC

MIGRATION – Jurisdiction of the Tribunal where the Applicant claims to be Aboriginal – application of tripartite test – mandatory cancellation of Class XB Subclass 202 Global Special Humanitarian visa under section 501(3A) – where Applicant does not pass the character test – Applicant has substantial criminal record – whether the discretion to revoke the visa cancellation under section 501CA (4) should be exercised – consideration of Ministerial Direction No. 99 – decision under review is affirmed

[RGCZ and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 2768 (28 August 2023); Senior Member C J Furnell

MIGRATION – refusal to grant Partner (Provisional) (Class UF) visa – Migration Act 1958 (Cth) s 501(1) – whether applicant for visa passes character test – risk applicant would engage in criminal conduct in Australia – risk not remote or minimal – applicant does not pass character test – whether to exercise discretion to refuse to grant the applicant the visa – Direction 99 – primary and other considerations – decision under review set aside and substituted

[SFPH and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 2763 (29 August 2023); Deputy President The Hon. J Pascoe AC CVO

MIGRATION – visa cancellation – mandatory cancellation under s 501(3A) of the Migration Act 1958 – where Applicant does not pass the character test – whether there is ‘another reason’ to revoke the cancellation – consideration of Direction No. 99 – protection of the Australian community – links to the Australian community – the best interests of minor children in Australia – expectations of the Australian community – legal consequences of decision – impediments to removal – reviewable decision affirmed

[Shuter and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 2734 (28 August 2023); Deputy President A Younes

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether there is another reason why the visa cancellation should be revoked – Ministerial Direction No. 99 – nature and seriousness of offending conduct – protection of the Australian community – strength nature and duration of ties to Australia – expectations of the Australian community – impediments to removal – decision set aside and substituted

[Tuivaiti and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2023]
AATA 2764 (28 August 2023); Senior Member K Raif

MIGRATION – mandatory cancellation of Class TY Subclass 444 Special Category (Temporary) visa under section 501(3A) – where Applicant does not pass the character test – Applicant has substantial criminal record – whether the discretion to revoke the visa cancellation under section 501CA (4) should be exercised – consideration of Ministerial Direction No. 99 – decision under review affirmed

[Vunipola and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 2825 (5 September 2023); Senior Member Dr M Evans-Bonner

MIGRATION – mandatory visa cancellation – decision of delegate of Minister not to revoke mandatory cancellation of the Applicant’s Visa – character test – substantial criminal record – offences include assault occasioning actual bodily harm, robbery and possess prohibited drugs – Applicant is a 34 year old citizen of New Zealand who arrived in Australia as a 10 year old child – Direction No 99 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – strength, nature and duration of ties to Australia – best interests of minor children nieces and nephews – expectations of the Australian community – legal consequences of the decision – extent of impediments if removed to New Zealand – impact on Australian business interests – no change to the way that New Zealand citizens are assessed in Direction No 99 – Reviewable Decision affirmed

[YNCP and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 2777 (1 September 2023); Deputy President B W Rayment OAM KC

MIGRATION – refusal to revoke mandatory cancellation – citizen of Fiji – family violence, driving, drug and other offences – five minor children – decision under review set aside and substituted

[YTNP and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 2778 (5 September 2023); Senior Member J C Kelly

MIGRATION – Safe Haven Enterprise (Class XE) visa – refusal to grant visa because applicant did not pass the character test – whether discretion under 501(1) should be exercised to refuse the application – Ministerial direction no.99 – protection of the Australian community – strength, nature and duration of ties to Australia – expectations of the Australian community – legal consequences of the decision – extent of impediments if removed – reviewable decision set aside

[YVBM and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2023] AATA 2789 (21 August 2023); Deputy President J Owen

MIGRATION – mandatory cancellation of Class XB Subclass 200 Refugee (Permanent) Class visa under section 501(3A) – where Applicant does not pass the character test – Applicant has substantial criminal record – nature and seriousness of offending - family violence – best interests of the child – international non-refoulement obligations – whether the discretion to revoke the visa cancellation under section 501CA (4) should be exercised – consideration of Ministerial Direction No. 99 – decision under review is set aside and substituted

[Zhu and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 2652 (21 August 2023); Deputy President B W Rayment OAM KC

MIGRATION – cancellation of business skills visa under s 134 of the Migration Act 1958 (Cth) – respondent failure to comply with s 135 – cancellation not invalid – residual discretionary power under s 134 – decision under review set aside and substituted

[1903842](#) (Migration) [2023] AATA 2220 (1 June 2023); M Ison, Senior Member

MIGRATION – Partner (Residence) (Class BS) visa – Subclass 801 (Partner) – relationship ceased – family violence – non-judicially determined claim – evidentiary requirements – IMMI 12/116 – LIN 23/026 – genuine de facto relationship prior to relationship breakdown – opinion of an independent expert – decision under review remitted

[2206412](#) (Migration) [2022] AATA 5272 (30 August 2022); A Younes, Deputy President

MIGRATION – cancellation – Bridging E (Class WE) visa – Subclass 050 (Bridging (General)) – ground for cancellation – charged with an offence – making a child amenable to sexual activity – consideration of discretion – Direction No.63 – government’s view – best interests of any children – does not have full insight into the nature of his offending – Department’s Procedures Advice Manual PAM3 – non-refoulement obligations – decision under review affirmed

[2209403](#) (Migration) [2023] AATA 2401 (9 June 2023); P Papadopoulos, Member

MIGRATION – Medical Treatment (Visitor) (Class UB) visa – Subclass 602 (Medical Treatment) – genuine temporary stay for purpose of visa – incentives to depart or remain – migration history – previous visitor visa refusal affirmed, applications for ministerial intervention unsuccessful, period as unlawful non-citizen and multiple bridging visas – short period of work in breach of conditions – reliance on agents – intermittent symptoms and established relationship with treatment providers – financial and emotional support from partner in Australia – registered relationship – only child of elderly parents – intention to return to Australia after completing treatment and visiting parents – benefit of doubt – decision under review remitted

[2307689](#) (Migration) [2023] AATA 2221 (9 June 2023); R Da Costa, Member

MIGRATION – Bridging E (Class WE) visa – Subclass 050 (Bridging (General)) – an unlawful non-citizen – no ongoing immigration matters – eighth application for a BVE on departure grounds – medical condition is not preventing him from departing Australia – failed to comply with several conditions imposed on his BVEs – applicant does not wish to depart Australia and has not made any arrangements to do so – not satisfied that applicant would abide by conditions imposed on a bridging visa if granted to him – decision under review affirmed

[Malag](#) (Migration) [2023] AATA 2252 (28 April 2023); B Darcy, Member

MIGRATION – Child (Migrant) (Class AH) visa – Subclass 117 (Orphan relative) – ‘orphan relative’ of an Australian relative – no parental care – contemporaneous death certificate of the mother – mutually unresponsive evidence regarding the father – bogus ‘death certificate’ – reasonable and compelling reasons for the lack of evidentiary material – inadequate level of migration advice and assistance – credible witness – decision under review remitted

[Nwosu](#) (Migration) [2023] AATA 2251 (22 May 2023); D Crawshay, Member

MIGRATION – New Zealand Citizen (Family Relationship) (Temporary) (Class UP) visa – Subclass 461 (New Zealand Family Relationship (Temporary)) – ‘member of the family unit’ requirement – validity of the visa application – s.56 letter – apprehended bias – role of merits review – decision under review affirmed

National Disability Insurance Scheme

[CPPM and National Disability Insurance Agency](#) [2023] AATA 2845 (7 September 2023); Senior Member K Parker

NATIONAL DISABILITY INSURANCE SCHEME – access request – whether access criteria under s 21 of the National Disability Insurance Scheme Act 2013 (Cth) are met – section 24 “disability requirements” – section 25 “early intervention requirements” – Applicant has a disability arising from various impairments – whether impairments are, or likely to be, permanent – whether impairments have resulted in substantially reduced functional capacity in any one of the six prescribed activities – whether recommended supports are more appropriately funded through other general systems of service delivery – decision under review affirmed

[DTFW and National Disability Insurance Agency](#) [2023] AATA 2837 (7 September 2023); L Bygrave, Member

NATIONAL DISABILITY INSURANCE SCHEME – access to scheme – whether the Applicant meets the disability requirements – whether the Applicant meets the early intervention requirements – multiple conditions including post-traumatic stress disorder, anxiety and depression/ persistent depressive disorder, acquired brain injury, chronic obstructive pulmonary disease, cardiovascular disease and Scheuermann’s Disease/lumbar spine pain – whether impairments are permanent – whether impairments result in substantially reduced functional capacity – disability criteria not met – early intervention criteria not met – decision under review affirmed

[Ghezzaoui and National Disability Insurance Agency](#) [2023] AATA 2835 (7 September 2023); Deputy President A Younes

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – disability requirements – post traumatic stress disorder – depression – anxiety – chronic pain – whether the impairments are, or likely to be, permanent – whether the impairments result in substantially reduced functional capacity – whether the Applicant is likely to require support under the scheme – decision under review affirmed

[Kupke and National Disability Insurance Agency](#) [2023] AATA 2830 (7 September 2023); Deputy President Mischin

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – epilepsy – assistance animal – seizure-alert dog – efficacy of the requested support – decision under review affirmed

[Sewell and National Disability Insurance Agency](#) [2023] AATA 2783 (31 August 2023); P Smith, Member

NATIONAL DISABILITY INSURANCE SCHEME DIVISION – Application to the Tribunal to review a decision of the National Disability Insurance Agency to approve a statement of participant supports under subsection 33(2) of the National Disability Insurance Scheme Act 2013 (Cth) – whether the Applicant’s request for approval to install three external ramps or pathways with handrails to three outside areas to the Applicant’s home meets the reasonable and necessary criterion test – whether the Applicant’s request for approval to tile the outside area of his swimming pool with either travertine or porcelain tiles meets the reasonable and necessary criterion test – whether the Applicant’s request for approval to modify his main bathroom and toilet meets the reasonable and necessary criterion test – whether the Applicant’s request for approval for a Thermomix meets the reasonable and necessary criterion test – whether the Applicant’s request for the approval of a complete home automation system meets the reasonable and necessary criterion test – whether the Applicant’s request for approval for an additional one hour per week of physiotherapy support with a physiotherapist meets the reasonable and necessary criterion test – whether the Applicant’s request for the approval of two hours per week of exercise physiology support with an exercise physiologist meets the reasonable and necessary criterion test – whether the Applicant’s request for the approval of 13 hours per week of 1:1 support for in-home assistance with daily living activities meets the reasonable and necessary criterion test – whether the Applicant’s request for approval for four hours per week of 1:1 support for the Applicant to access the community for social participation in the community meets the reasonable and necessary criterion test – where the Applicant did not own a home when he became a participant in the National Disability Insurance Scheme (the NDIS) – where the Applicant 14 months later decided to purchase a house without involving the Agency as required by the National Disability Insurance Scheme – Including Specific Types of Supports in Plans Operational Guideline – Home Modifications – consideration of the prudent expenditure of public funds where the Applicant is requesting the use of public funds for his home modification supports in circumstances where he did not involve the Agency in the decision to purchase this property – whether the Applicant’s decision to purchase his home without involving the Agency is a matter that the Tribunal should take into consideration in determining whether the home modification supports represent value for money for the purpose of subsection 34(1)(c) of the NDIS Act – whether the Applicant’s reporting of pain is attributable to his disability of Charcot Marie Tooth Disease - whether the Applicant’s house can feasibly be made wheelchair accessible – where the expert opinions of the parties’ Occupational Therapists and the Respondent’s Building Consultant differ in opinion with regard to home modifications – consideration of what weight the Tribunal should give the expert evidence of the parties’ witnesses – whether sufficient expert evidence provided in support of all requested supports - decision under review set aside and remitted to the Chief Executive Officer of the Respondent for reconsideration directing that funding be allocated to the Applicant’s Plan for reasonable and necessary supports

[Van Hout and National Disability Insurance Agency](#) [2023] AATA 2771 (29 August 2023); I Thompson, Member

NATIONAL DISABILITY INSURANCE SCHEME – access to the scheme – disability requirements – early intervention requirements – applicant aged 38 – has impairments from type 1 diabetes, autonomic neuropathy and gastroparesis – consideration of medical history and treatments – whether impairments resulted in substantially reduced functional capacity – disability requirements under s 24 NDIS Act not met – early intervention requirements under s 25 NDIS Act met – decision set aside

[VXGN and National Disability Insurance Agency](#) [2023] AATA 2781 (4 September 2023); Senior Member J Collins

NATIONAL DISABILITY INSURANCE SCHEME – Autism – ABA therapy – reasonable and necessary supports – consideration of section 34 National Disability Insurance Scheme Act 2013 (Cth) – current good practice – section 34(1)(d) National Disability Insurance Scheme Act 2013 (Cth) – decision set aside and remitted to the Respondent

[ZJSG and National Disability Insurance Agency](#) [2023] AATA 2784 (31 August 2023); T Bubutievski, Member

NATIONAL DISABILITY INSURANCE SCHEME – participant – reasonable and necessary supports – reasonable and necessary supports in relation to disability – supports not limited to accepted impairment – ‘impairment’ as an aide to administrative understanding – participants can seek supports for disabilities which do not meet the access requirements – test of reasonable and necessary is s 34 and the Rules – supports already provided in the Plan by the Agency for disabilities which do not meet the access requirements – exercise physiology not established to be reasonable and necessary – decision remitted

Practice and Procedure

[Bakker and Australian Capital Territory](#) (Compensation) [2023] AATA 2770 (30 August 2023); S Webb, Member

PRACTICE AND PROCEDURE – review of decision refusing compensation claim in respect of alleged injury – psychological ailment – application for summons – objections to grant of access – relevance – scope – legitimate forensic purpose – objections refused

[Golding and National Disability Insurance Agency](#) [2023] AATA 2877 (7 September 2023); S Webb, Member

PRACTICE AND PROCEDURE – extension of time – no adequate explanation for delay – consideration of relevant factors – objections refused

[James and Comcare](#) (Compensation) [2022] AATA 2390 (29 August 2022); Senior Member Dr M Evans-Bonner

PRACTICE AND PROCEDURE – workers’ compensation – application for reinstatement of two withdrawn applications – whether applications dismissed in error – where written withdrawals suggested the Applicant did not want to proceed because she was pursuing a negligence action in the Federal Court – other reasons subsequently put forward by Applicant during the reinstatement hearing that she was not mentally well at the time of withdrawal, that she was intimidated by one of Comcare’s witnesses, that her adult children may be embarrassed by the proceedings, that there were special circumstances for reinstatement and that she could now afford to obtain legal representation – finding that special circumstances relate to an extension of time to seek reinstatement and do not constitute a separate ground upon which reinstatement can be sought – allegations of improper conduct by Comcare found to be baseless – applications for reinstatement of both applications refused

[LXMR and Decision Marker](#) [2023] AATA 2774 (11 August 2023); Senior Member A Poljak

PRACTICE AND PROCEDURE – jurisdiction – application for review of a decision by the NSW Department of Education – application for review of the handling of a case by the Federal Circuit and Family Court of Australia – whether Tribunal has jurisdiction to review decision – Tribunal does not have jurisdiction to review decision

[Kaur and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 2739 (28 August 2023); Lee Benjamin, Member

PRACTICES AND PROCEDURES – Applicant’s failure to proceed and failure to comply with directions in citizenship refusal decision review application – application dismissed

[MacRae and Australian Capital Territory](#) (Compensation) [2023] AATA 1386 (24 May 2023); Senior Member C J Furnell

PRACTICE AND PROCEDURE – application for confidentiality orders – application for non-publication of decision – application for removal of files from Tribunal database – whether confidentiality orders can be granted to prevent reputational harm – general principle of open justice – public interest – where decision had already been published – application for confidentiality orders refused

[NTKT and Australian Information Commissioner](#) (Freedom of information) [2023] AATA 2766 (29 August 2023); Senior Member C J Furnell

PRACTICE AND PROCEDURE – Administrative Appeals Tribunal Act 1975, s 42D – whether decisions should be remitted to decision-maker for reconsideration – where Applicant opposes remittal – where respondent acknowledges that the decisions the subject of review are flawed – consideration of power to remit – appropriate to exercise discretion to remit the decisions in the circumstances – decisions remitted to decision-maker for reconsideration

[Oudyn and Australian Postal Corporation](#) (Compensation) [2023] AATA 2730 (28 August 2023); Deputy President I Hanger

PRACTICE AND PROCEDURE – dismissal application – whether application is frivolous, vexatious, misconceived or lacking in substance – whether application is an abuse of process – whether application has no reasonable prospect of success – whether Applicant may relitigate issues – new evidence produced by Applicant – dismissal application is dismissed

[Rowe and National Disability Insurance Agency](#) [2023] AATA 2762 (28 August 2023); I Thompson, Member

PRACTICE AND PROCEDURE – access request to become a participant in the NDIS rejected – decision affirmed on internal review – application for review by the Tribunal – Applicant’s request for a notice under section 37 (2) of the Administrative Appeals Tribunal Act 1975 to the Respondent to produce additional documents – order for production of documents not made

[Rowley and Decision Maker](#) [2023] AATA 2732 (22 August 2023); Senior Member Emeritus Professor P A Fairall

PRACTICE AND PROCEDURE – jurisdiction – decision to exclude university student – student misconduct – no jurisdiction found – application dismissed

[Stanes and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 2836 (4 September 2023); L Benjamin, Member

PRACTICE AND PROCEDURE – Applicant’s failure to proceed with application for review of a decision made by the Social Services and Child Support Division of the Administrative Appeals Tribunal

[ZWXT and National Disability Insurance Agency](#) [2023] AATA 2724 (15 August 2023); Senior Member K Parker

PRACTICE AND PROCEDURE – National Disability Insurance Scheme (NDIS) – Applicant is child participant in the NDIS – Applicant’s father made requests for summonses to give evidence, addressed to four staff members of the National Disability Insurance Agency (NDIA) – whether evidence likely to be adduced from each of the NDIA staff members can reasonably be expected to shed light on the issues in this proceeding – consideration of the issues arising in this proceeding – consideration of the task of the Tribunal when undertaking merits review in the context of this application – Tribunal exercises its discretion under s 40A(2) of the Administrative Appeals Tribunal Act 1975 (Cth) to refuse each of the requests to summon the four named NDIA staff members to give evidence at the hearing

Refugee

[1609946](#) (Refugee) [2023] AATA 2313 (17 April 2023); J Pennell, Senior Member

REFUGEE – protection visa – Egypt – religion – Coptic Christian – son’s involvement with church event – discussion of controversial issues – conversion from Islam to Christianity – leaked on the internet – subsequent threats and harassment – no evidence provided of the event – no evidence provided of internet leak – tribunal accepts applicant would be subject to social discrimination – does not amount to serious harm – economic circumstances as elderly person with limited financial resources – health issues – state of health care in Egypt – will suffer serious harm by reason of his failure to subsist – no jurisdiction for first applicant who is deceased – decision under review remitted

[1715386](#) (Refugee) [2023] AATA 2518 (26 June 2023); J Silva, Member

REFUGEE – protection visa – Turkey – political opinion – conscientious objector to military service – successive deferrals by enrolling in university courses – unclear history and limited supporting evidence – failure to respond to call-up letter, arrest warrant and duration of absence – letters from conscription office and solicitor – country information – deferral and evasion of military service – not a conscientious objector but genuine wish to evade military service for personal reasons – no further deferrals or exemptions available – subject to fine, required service or imprisonment – law of general application – totality of circumstances and cumulative effect of claims – state of emergency after failed coup attempt – small but real chance of adverse attention as member of particular social group of draft evaders – activities in Australia not for purpose of strengthening claim – decision under review remitted

[1720879](#) (Refugee) [2023] AATA 2157 (12 April 2023); J Marquard, Member

REFUGEE – protection visa – Philippines – particular social group – women – victim of family violence from father – trauma from repeated violent behaviour – fear of killing – complementary protection – reasonable internal relocation – effectiveness of law enforcement – decision under review remitted

[1729381](#) (Refugee) [2023] AATA 2441 (24 May 2023); T Hamilton-Noy, Member

REFUGEE – protection visa – South Korea – particular social group – arranged marriage – family violence – single women – women with severe mental health issues – delay in applying for protection – return visit to South Korea – employment – complementary protection – decision under review remitted

[1831247](#) (Refugee) [2023] AATA 2276 (11 April 2023); D James, Senior Member

REFUGEE – Protection visa – Sierra Leone – political opinion – All People’s Congress (APC) supporter – fear of harm from Sierra Leone People’s Party (SLPP) members and/or supporters – involvement in the production of APC campaign material – does not have a significant APC supporter profile – credibility concerns – wife and son are Australian citizens – compassionate circumstances – likely psychological harm – exceptional economic, scientific, cultural or other benefits to Australian community – vacancies in industry in which applicant is training and working – Ministerial intervention requested – decision under review affirmed

[1834929](#) (Refugee) [2023] AATA 2241 (27 April 2023); P Noonan, Member

REFUGEE – protection visa – Sri Lanka – Federal Circuit Court remittal – political opinion – United National Party volunteer – particular social group – failed asylum seekers – suspected people smugglers – physical assault – fear of torture – mental illness – complementary protection – decision under review remitted

[1912149](#) (Refugee) [2023] AATA 2230 (19 April 2023); D Dragovic, Deputy President

REFUGEE – protection visa – Pakistan – Federal Circuit Court remittal – imputed political opinion – Village Defence Committee family member – working for an NGO – particular social group – returnee from the West – kidnapping – forced assistance to Taliban – Taliban threat letters – internal relocation – mental health issues – decision under review affirmed

[2119295](#) (Refugee) [2023] AATA 2587 (11 July 2023); T Hamilton-Noy, Member

REFUGEE – cancellation – protection visa – stateless/Iran – incorrect answers in visa application – citizenship, rights in Iran and illegal departure – information from uncle that some family members are Iranian citizens – discretion to cancel visa – country information – availability of some documentation and rights – exit procedures at airport – applicant likely a citizen or at least eligible – claim of statelessness maintained at hearing – length of residence, wife a permanent resident with application for citizenship in progress, and young child a citizen – physical and mental health and treatment – no voluntary return and possibility of indefinite detention – decision under review set aside

[2201577](#) (Refugee) [2023] AATA 2228 (19 April 2023); M Bishop, Senior Member

REFUGEE – Protection Visa – India – political opinion – in support of the Congress Party – membership of particular social groups – persons in inter-caste marriages in Punjab – mental health issues – applicants have a well-rounded fear of persecution – decision under review remitted

Social Security

[KTDN and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 2731 (25 August 2023); Senior Member Emeritus Professor P A Fairall

SOCIAL SECURITY – parenting payment single – eligibility – deemed date of claim – waiting period – personal financial crisis – severe financial hardship – domestic violence – decision under review set aside

[McDonald-Wooding; Secretary, Department of Social Services and](#) (Social services second review) [2023] AATA 2860 (8 September 2023); A E Burke AO, Member

CHILD CARE SUBSIDY – whether applicant entitled to child care subsidy – whether an effective claim was lodged – whether incorrect advice provided by Centrelink – decision of the AAT1 set aside and substituted for the original determination

[Weeding; Secretary, Department of Social Services and](#) (Social services second review) [2023] AATA 2767 (29 August 2023); W Frost, Member

SOCIAL SECURITY – pensions, benefits and allowances – disability support pension – eligibility for disability support pension – whether the respondent's impairments are fully diagnosed, fully treated and fully stabilised – whether 20 points or more under the impairment tables during the relevant period – decision under review set aside

[Williams and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 2832 (7 September 2023); Senior Member K Millar

SOCIAL SECURITY – pensions – age pension – claim for age pension – debt – overpayment of age pension – grounds to waive debt – income stream not taken into account – error not corrected by applicant – calculation of debt – lengthy debt period – accuracy of debt calculation – insufficient information on income and assets streams at different points in time in debt period – decision under review is set aside and remitted for reconsideration

Superannuation

[Trustee for the Kitchen Unit Trust and Commissioner of Taxation](#) (Taxation) [2023] AATA 2831 (5 September 2023); R Reitano, Member

TAXATION – superannuation guarantee charge – whether worker was an employee or a contractor – ordinary meaning – contract wholly or principally for the labour of the person – worker found to be employee – decisions under review affirmed

Taxation

[Nicholls and Commissioner of Taxation](#) (Taxation) [2023] AATA 2772 (31 August 2023); D Mitchell, Member

TAXATION – deductions – personal superannuation contributions – notification of intention to claim deduction – time frame for notification – whether discretion exists to extend the tie for notification or to disregard failure to notify – decision under review affirmed

[Rusanova and Commissioner of Taxation](#) (Taxation) [2023] AATA 2782 (1 September 2023);
Deputy President I R Molloy

TAXATION – income tax- failure to lodge tax returns – administrative penalties – tax related liabilities
– decision under review affirmed – default assessments

Veterans' Affairs

[Butler and Repatriation Commission](#) (Veterans' entitlements) [2023] AATA 2765 (29 August
2023); Deputy President J Sosso

VETERANS' ENTITLEMENTS – War Widows Pension – Passive Smoking – Kind of Death – Acute
Myeloid Leukaemia – Death and Defence Service – Applicable Statement of Principles – Decision
Affirmed

Appeals

This section of the Bulletin provides information about appeals that have been lodged or finalised against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals Divisions. Information is only included about appeals relating to AAT decisions that have been published on [AustLII](#). Full copies of the decisions can be accessed through the hyperlinks provided below.

Appeals lodged

CASE NAME	AAT REFERENCE
Double Bay Aged Care Pty Ltd and Aged Care Quality and Safety Commissioner	[2023] AATA 2673
Finau and Minister for Immigration, Citizenship, and Multicultural Affairs	[2023] AATA 2283
HDTY and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 1436
TKYY and Commissioner of Taxation	[2023] AATA 2497
Nguyen and Minister for Immigration, Citizenship Multicultural Affairs	[2023] AATA 2543
QDWQ and Minister for Immigration, Citizenship, and Multicultural Affairs	[2023] AATA 2012
Stern and Commissioner of Taxation	[2023] AATA 2010
Walker Group Holdings Pty Ltd and Australian Conservation Foundation Incorporated	[2023] AATA 2307
YQLH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2023] AATA 2216

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Buntin v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 2604	[2023] FCA 1055
CRNL v Minister for Immigration, Citizenship and Multicultural Affairs	[2021] AATA 2382	[2023] FCAFC 138 [2023] FCA 252
CRRN v Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 1112	[2023] FCA 1050
Garland v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 2022	[2023] FCAFC 144 [2023] FCA 247

**Jama v Minister for Immigration,
Citizenship and Multicultural Affairs**

[\[2021\] AATA 134](#)

[\[2023\] FCAFC 148](#)

[\[2023\] FCA 263](#)

John Holland Pty Ltd v Bartlett

[\[2022\] AATA 1329](#)

[\[2023\] FCA 1030](#)

Statements of Principles

This section of the *Bulletin* provides information on recent developments including the notification or completion of investigations in relation to Statements of Principles made by the Repatriation Medical Authority (RMA) for the purposes of section 120A(2) of the [Veterans' Entitlements Act 1986 \(VEA\)](#) and section 338(2) of the [Military Rehabilitation and Compensation Act 2004 \(MRCA\)](#). These Acts require reference to be had to Statements of Principles made about particular conditions concerning injury, disease or death.

If the RMA gives notice that it intends to carry out an investigation in respect of a particular kind of condition, the Repatriation Commission cannot determine a claim made under the VEA about the incapacity or death of a person relating to that condition, until the RMA has determined a Statement of Principles or declares that it does not propose to determine a Statement of Principles about the condition. Also during this period, claims under the MRCA cannot be determined, reconsidered or reviewed by either the Repatriation Commission, the Veterans' Review Board or the AAT, until the RMA has determined a Statement of Principles about the condition concerned or declared it does not propose to do so.

Certain claims cannot succeed if the RMA has declared it does not propose to make a Statement of Principles in relation to the particular condition.

Existing Statements of Principles are also reviewed, amended or revoked from time to time.

Notification of Investigations (where there is no existing Statement of Principles)

On 4 September 2023, the AAT was advised that the RMA intends to carry out investigations under subsection 196B(4) of the VEA to determine whether a Statement of Principles may be determined in respect of the following conditions (where there is no existing Statement of Principles):

Daily Persistent Headache - <https://www.legislation.gov.au/Details/C2023G01038>

New Statements of Principles

The AAT has been advised that the RMA has made the following new Statements of Principles. These take effect from 26 September 2023:

Soft tissue sarcoma (Reasonable Hypothesis) – No. 76 of 2023

<https://www.legislation.gov.au/Details/F2023L01136>

Soft tissue sarcoma (Balance of Probabilities) – No. 77 of 2023

<https://www.legislation.gov.au/Details/F2023L01139>

Tardive dyskinesia (Reasonable Hypothesis) – No. 78 of 2023

<https://www.legislation.gov.au/Details/F2023L01180>

Tardive dyskinesia (Balance of Probabilities) – No. 79 of 2023

<https://www.legislation.gov.au/Details/F2023L01179>

Malignant neoplasm of the small intestine (Reasonable Hypothesis) – No. 80 of 2023

<https://www.legislation.gov.au/Details/F2023L01168>

Malignant neoplasm of the small intestine (Balance of Probabilities) – No. 81 of 2023

<https://www.legislation.gov.au/Details/F2023L01170>

Plantar fasciitis (Reasonable Hypothesis) – No. 82 of 2023

<https://www.legislation.gov.au/Details/F2023L01134>

Plantar fasciitis (Balance of Probabilities) – No. 83 of 2023

<https://www.legislation.gov.au/Details/F2023L01142>

Malignant neoplasm of the breast (Reasonable Hypothesis) – No. 84 of 2023

<https://www.legislation.gov.au/Details/F2023L01174>

Malignant neoplasm of the breast (Balance of Probabilities) – No. 85 of 2023

<https://www.legislation.gov.au/Details/F2023L01175>

Malignant neoplasm of the lung (Reasonable Hypothesis) – No. 86 of 2023

<https://www.legislation.gov.au/Details/F2023L01145>

Malignant neoplasm of the lung (Balance of Probabilities) – No. 87 of 2023

<https://www.legislation.gov.au/Details/F2023L01146>

Charcot-Marie-Tooth disease (Reasonable Hypothesis) – No. 88 of 2023

<https://www.legislation.gov.au/Details/F2023L01164>

Charcot-Marie-Tooth disease (Balance of Probabilities) – No. 89 of 2023

<https://www.legislation.gov.au/Details/F2023L01165>

Statements of Principles to be revoked

The AAT has been advised that the following Statements of Principles determined by the RMA **will be revoked** on **26 September 2023**:

Malignant neoplasm of the lung – No. 92 of 2014

<https://www.legislation.gov.au/Details/F2014L01382>

Malignant neoplasm of the lung – No. 93 of 2014

<https://www.legislation.gov.au/Details/F2014L01384>

Malignant neoplasm of the breast – No. 96 of 2014

<https://www.legislation.gov.au/Details/F2014L01383>

Malignant neoplasm of the breast – No. 97 of 2014

<https://www.legislation.gov.au/Details/F2014L01387>

Malignant neoplasm of the small intestine – No. 1 of 2015

<https://www.legislation.gov.au/Details/F2014L01807>

Malignant neoplasm of the small intestine – No. 2 of 2015

<https://www.legislation.gov.au/Details/F2014L01810>

Soft tissue sarcoma – No. 5 of 2015

<https://www.legislation.gov.au/Details/F2014L01817>

Soft tissue sarcoma – No. 6 of 2015

<https://www.legislation.gov.au/Details/F2014L01818>

Charcot-Marie-Tooth disease – No. 21 of 2015

<https://www.legislation.gov.au/Details/F2014L01827>

Charcot-Marie-Tooth disease – No. 22 of 2015

<https://www.legislation.gov.au/Details/F2014L01829>

Plantar fasciitis – No. 51 of 2015

<https://www.legislation.gov.au/Details/F2015L00257>

Plantar fasciitis – No. 52 of 2015

<https://www.legislation.gov.au/Details/F2015L00258>



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